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A DISSERTATION - NOT AN OPINION

by

V. D. N.

The editors have told me that I have one hour within which to supply this article. (The delay is wholly mine.) This is not an opinion, either official or unofficial. If some of the questions are rhetorical and raise an inference of my present predilections the doctrine of stare decisis is wholly inapplicable.

The discussion concerns Section 4 of the Rural Electrification Act of 1936 which impliedly limits REA loans to

> "...the purpose of financing the construction and operation of generating plants, electric transmission and distribution lines or systems for the furnishing of electric energy to persons in rural areas who are not receiving central station service."

Does this language indicate a Congressional intent

1. to circumscribe the field within which monies may be expended without reference to the existence or non-existence of a competitive situation?

2. to protect existing enterprise from the competition of Government-financed lines?

Debates in Congress and the Hearing before the House Committee in charge of the Bill indicate that the latter intent was controlling in the minds of many. There are obvious questions, however, whether such intent can be spelled out of the language used or whether there is a sufficient ambiguity to justify resort to the legislative history.

If the prevention of competition is implicit in the restrictive clause, was it intended that the limitation should extend to borrowers so as to bind them in the use of funds other than those supplied by REA? If this question is answered in the affirmative, there is the further constitutional question as to the power of Congress so to condition a loan under the general welfare clause. Such a condition is not within the orbit of the spending nor is it reasonably related to a protection of the Government's investment. It should be noted that this question goes beyond the situation in United States v. Butler, 297 U.S. 1, where the regulatory condition held to be unlawful was closely connected in time with the Government spending.

The phrase "receiving central station service" seems a simple, innocuous concept admitting of little interpretation and requiring little. Let us look, however, into a few situations.

1. Let us assume an existing distribution line now rendering service eighteen hours per day with poor voltage regulation over poles that are about ready to give up the struggle. Are the customers along such a line barred from the blessings of REA service? Must the farmer's wife continue to stub her toe at midnight when the baby cries? Must the farmer pump and carry water in zero weather when the motor fails? Must this community wait until the line falls over before it can participate in an REA

project, missing perhaps the only opportunity for such participation that may present itself in several years?

2. Let us vary the picture by assuming an adequate primary line but customer services at a capacity which permit only a lighting load. Some of these customers want ranges; others want large meters. They are not receiving such service and cannot receive it under existing facilities. The company serving them has no money for larger transformers or for three phase secondaries. It comes to REA for financial help. Shall we say "Go back to the farmers and their wives and their daughters and tell them that their initial choice of 'lights only' was an irrevocable election barring them now from the service that is normally incident to enlightened rural economy?" On the other hand, shall it be said that the term "central station service" illuminated from the four corners of the statute contemplates an adequate service by which a perspiring housewife can cook in comfort, a farmer can emerge from brute force to motor driven manhood, and the farmer's daughter can be kept on the farm?

The clause in question rises in the path of persons seeking REA loans at several other points.

1. May REA finance the paralleling of so-called "spite lines" built for the apparent purpose of blocking or thwarting an REA project? Can the builder of such spite lines, after seeking to thwart and obstruct the plans of persons attempting to carry out the purposes of the Rural Electrification Act, invoke this restrictive clause of the Act further to assist it in this obstructive purpose? On the other hand, it has been the position of REA: first, that deliberate efforts to nullify the purposes of the statute cannot reasonably fall within any protection accorded by the statute; second, that REA is empowered to assist its borrowers in completing their plans as originally conceived even though such spite lines may have been built before the loan allocation was made. This position does not rest upon an interpretation of the restrictive clause as intended to prevent competition; it involves rather a proper disregard for the purposes of the statute of service that was made available to unwilling customers outside a normal and legitimate course of business.

2. May REA finance the purchase of existing distribution facilities when such a purchase will make possible the service of unserved areas? At the outset it would seem that the doctrine of "the tail wagging the dog" might be adopted as some sort of criterion. Regardless of other considerations, it would be difficult to defend the purchase of 100 miles of line in order to make possible the construction and operation of 10 new miles. Except for those who are unduly timid in drawing a bold line in a field of degree, a 100 mile dog and a 100 mile tail might be a lawful creature.

This problem has two facets: first, the restrictive clause here considered; and second, the implied limitation of loans to the purposes of "construction and operation". As regards the limitation based upon existing central station service it seems obvious that any line which could be paralleled can be purchased. The same persons are being served in either event.

If REA loans were part of a work relief program it might be necessary to give a more significant and more literal interpretation to the word "construction". Even in a work relief project, however, it would seem that certain fixed property could be purchased as a necessary means of carrying out the project of employment. Greater scope is afforded by the REA statute for the exercise of such an incidental power. The word "operation" must be given a significant meaning. Even though the purchase of existing facilities as a capital investment cannot be rested wholly upon the concept of a loan for operating purposes as an independent power it is obvious that the statute as a whole contemplates bringing into being an enterprise capable of effective functioning. By the express language of the statute our lending power does not stop with the mere construction of facilities, but extends to the functioning of

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Address suggestions and contributions to the Editorial Office---REA, Room 204, 1518 "K" Street, Washington, D. C.

RECENT CASES

Chattel Mortgages - Validity in Absence of Oral Oath

Plaintiff argues that chattel mortgage was invalid on the ground that the instrument purporting to create it had not been sworn to. The mortgage contained the following language: "Affiant being duly sworn says...," and was executed in the presence of the notary. The notary testified that no oral oath had been administered. Held, "that where a person, for the purpose of taking an oath in compliance with law, knowingly signs a written statement of an oath before an officer authorized to administer an oath, the law is complied with as effectively as when he responds to an oral oath." Cincinnatti Finance Co. v. First Discount Corp., 17 N.E. (2d) 383 (Ohio App. 1938).

This case does not represent the unanimous weight of authority. See, for a thorough discussion of the opposing view, Britt v. Davis, 130 Ga. 74, 60 S.E. 180 (1908). For a collection of cases presenting both views see Note: Formalities of Administering or Making Oath (1927) 51 A.L.R. 840.

Commission Jurisdiction - Controversy relating to generation of electricity

Farmers filed a complaint with the Montana Public Service Commission alleging that they owned lands irrigated from the Madison River and that the Montana Power Company had stored an excessive amount of water taken from the river during the irrigation seasons, thereby depriving the farmers of the full flow of the river. The District Court issued a writ prohibiting the Public Service Commission from assuming jurisdiction. Held, affirmed. This is a controversy between the utility and private persons not consumers. Jurisdiction over such a controversy requires the exercise of judicial powers which may not be delegated to a Commission. The adjudication of the rights here involved is a matter for the courts. State ex rel, Public Service Commission v. District Court, Mont. Sup. Ct. Nov. 15, 1938.

Contracts - Consideration

Held, that an agreement between a creditor and a debtor that a liquidated debt be satisfied in full by the payment and acceptance of an amount admittedly less than the debt is not void for want of consideration. Rye v. Phillips, 6 U.S.L. Week 450 (Minn. Sup. Ct., Nov. 25, 1938).

The court points out that the contrary doctrine to the effect that neither the creditor nor the debtor is bound by the agreement is supported by ample authority throughout the common law, including a decision of the Minnesota Supreme Court. Trunkey v. Crosby, 33 Minn. 464 (1885). However, the court states that the rule "is one of the relics of antique law which should have been discarded long ago. It is evidence of the former capacity of lawyers and judges to make the requirement of consideration an overworked shibboleth rather than a logical and just standard of actionability." The court, stating that the rule had been judge-made and by now had been changed by statute in several states, concluded: "judges are just as competent

to get rid of it as the legislature."

Corporations - Restrictions on transfer of shares

A corporation had the following provision in its Certificate of Incorporation: "In order to insure the harmonious conduct of the business of the corporation and to prevent the introduction of any Common Stockholder for any reason deemed unsuitable, the rights of the holders of Common Stock to dispose of the shares of such stock shall be subject to the following restrictions (which shall constitute an agreement between the holders of Common Stock of the Corporation and shall enure to the benefit of and be binding upon the executors, administrators, legal representatives, successors and assigns of all said parties)...." This section was followed by a provision giving to the board of directors the option to purchase any share of stock not held by employees. Detailed procedure for determining the value of the shares was provided. The complainant, a former employee, filed a bill to enjoin the corporation from proceeding with its declared intention to repurchase his shares. The corporation demurred to the bill. Held, that the restraint imposed by the charter restriction was unreasonable and violated public policy. Greene v. Rollins & Sons, 2 A. (2d) 249 (Del. Ch. 1938).

The court pointed out that restrictions similar in nature have been upheld. See Lawson v. Household Finance Corp., 17 Del. Ch. 343, 152 Atl. 723 (1930) where a provision requiring any holder of a certain class of stock desiring to sell the same to give the corporation the first opportunity to buy it was upheld. The latter case was decided, the court found, on the basis "of the particular nature of the corporation's business and the special contribution to the success thereof which was calcuated to ensue from the identity of management and stockholder personnel". Therefore, the court stated that if upon trial the defendant should demonstrate that "the character of its business (is) such, and the ends and purposes of the restraint complained against (are) so related to the corporation's successful operation, as to warrant the conclusion that the restraint is reasonable" the result might well be different. The language and distinctions of the court leave open the way for restrictions in the case of cooperatives, even though formed under general incorporation statutes, not permitted in the case of ordinary business corporations.

Municipal Corporations - Power of town to limit franchise for maintenance of power lines

State statute authorized municipalities to grant franchises to public utilities to maintain power lines. No time limit was expressed in the statute. A town authorized a twenty-year franchise, and fifteen months after the expiration of the franchise ordered the removal of the poles and wires. Electric company filed a bill of complaint contending (1) the town had no authority to limit the term of the franchise, (2) by waiting fifteen months, the town indicated its consent to perpetual use by the company of the town property. Held, judgment for the town. The statute authorized, but did not require, the town to give a perpetual franchise. Moreover, the delay in action by the town for fifteen months cannot be considered an extension of the old franchise or the granting of a new perpetual franchise. The court indicated that had the company made large expenditures during the fifteen months, and the town had remained silent, the facts might justify an opposite conclusion. Eastern Shore Public Service Co. v. Town of Seaford, 2 A. (2d) 265 (Del. 1938).

Municipal Corporations - Selling electric energy outside corporate limits.

Municipal corporation had sold its surplus electric energy for a number of years to all people outside the city limits requesting such service. After a fire at petitioner's home, the city refused to supply him with electric current,

and the petitioner obtained an order from the public service commission requiring the city to furnish him with electric energy. The city appealed on the ground that though it was a public utility by virtue of the Vermont Statutes. in its dealings with its own citizens, yet since there was no express statutory power granted to a municipality to sell surplus energy, such sale did not constitute the doing of a utility business but merely consisted of a number of private undertakings with various surburban customers. Held, judgment of the commission affirmed. By serving all consumers outside the city indiscriminately for a number of years, the city had dedicated its surplus, which the facts indicated would be permanent rather than temporary, to the general surburban public, and the absence of express legislative authority to sell its surplus outside the corporate limits was irrelevant to the issue. Valcour v. Morrisville, 2 A. (2d) 312 (Vt. 1938).

Negligence - Construction of guy wires without informing occupant of premises

Power company obtained permission of landlord to enter premises occupied by various tenant farmers and to construct service lines for electricity to the tenant houses. While the tenants were at work, the employees of the power company entered the premises and without giving notice to anyone, erected a light pole and attached anchoring guy wires. In the evening, the plaintiff tenant returned and while walking in the yard fell over the guy wire, fracturing a portion of his spinal column. Plaintiff brings an action for damages for personal injuries against the defendant power company. Held, judgment for the plaintiff for $10,000. The rule of the court is that although one enters rightfully the premises of another, he will be liable for any injuries caused by acts rendering the premises unsafe. Arkansas Power & Light Co. v. Thompson, 120 S.W. (2d) 709 (Ark. 1938).

Public Utility Districts - Power of eminent domain

Public utility district instituted eminent domain proceedings against property of a private electric company which defended on the ground (1) that no fund had been provided for the payment of the award that might be granted, and (2) that the statute providing for eminent domain proceedings does not limit the time within which the award must be paid or rejected and that therefore the public utility district would receive a continuing option on the property of the electric company. Held, that "the establishment of a fund to insure payment of the compensation awarded is not a prerequisite to the maintenance of condemnation proceedings," and that the award once granted must be paid or rejected within a reasonable length of time. However, the payment must precede the seizure or use of the property. The court left undecided the question as to whether utility bonds, issued by the public utility district and payable out of revenues from the properties acquired would constitute a satisfactory payment or fund for payment of the award. State ex rel. Willapa Electric Co. v. Superior Court, 83 P. (2d) 742 (1938).

ADMINISTRATIVE INTERPRETATIONS

Commission Jurisdiction - Power of commission to reject application on ground of ultra vires action

The applicant, a carrier, seeks a permit authorizing it to transport products of an oil company. Objection to granting the application was made on the ground that the applicant's charter does not authorize it to engage in the proposed activity. By statute, the commission has authority to reject permits in the event that the proposed operation is not consistent with "public interest". Ruled, permit granted since the proposed operation would be consistent with the public interest. We are not concerned with the matter of applicant's corporate authority. The determination of whether

or not operation by applicant under the permit here sought would be ultra vires is a matter over which we have no jurisdiction." Good Roads Co., Inc., I.C.C. Dec. No. MC50092 (Nov. 4, 1938).

Public Utilities-Trustees - Trustee under debenture indenture of holding company acting as trustee under bond indenture of subsidiary.

Trust company was named as trustee under the debenture indenture of a holding company. Thereafter, one of the subsidiaries of the holding company, an operating utility company, sought to name the trust company as trustee under a mortgage and deed of trust executed to secure a bond issue. Ruled, the trust company could not act as trustee in both situations since the interests of the bondholders of the holding company might well be contrary to the interests of the bondholders of the utility company and the trust company would find itself in a position where it could not act with complete loyalty to both parties. Especially true would this be in the event that it became necessary or desirable to reorganize the operating company. In re Indiana General Service Co., Holding Company Act Release 1328, Nov. 30, 1938.

Taxation - "Public Service" companies

Kentucky Franchise Tax Act provides: "Every railway company, gas company, water company..., electric light company, electric power company...and every other light company or business performing any public service, shall, in addition to the other taxes imposed on it by law...pay a tax on its franchises to the state, and a local tax thereon to the county, incorporated city, town, and taxing district, wherein its franchise may be exercised." A mining company supplied its employees with electricity because the geographical location of the mines was such that it was impossible for the employees to work there unless such facilities were provided. The employees paid the company rent--the latter charge including the expense for electricity. No attempt was made to make a profit. Ruled, that the company is liable for the franchise tax since any person or company producing or selling electric energy is taxable. Opinion of Attorney General of Kentucky to Commissioner of Revenue, Oct. 7, 1938.

RECENT LEGAL MEMORANDA

Tax Memo. - Missouri Property Taxes
L. Jones to Altkrug

Indiana Basic State Law Memorandum
E. Hertz

No. 812B - Liability of Cooperative for damages to a member caused by negligent inspection on the part of the Cooperative's wiring inspector.
Broderick to Nicholson
A supplementary memorandum discussing the problem of whether the wiring inspector is an independent contractor or servant. The conclusion is reached that the inspector is or can be made an independent contractor and that in such case the only duty of the cooperative is to use due care in the selection of the inspector.

No. 830 - Methods of releasing mortgage liens in North Carolina
E. Jones to Lamberton

No. 831 - Study of the opinion of the Acting Comptroller General wherein he purports to exempt certain field employees from the operation of the Act of Congress restricting employment at the seat of Government (5 U.S.C.A. Secs. 45, 46), with the conclusion that it is not applicable to the REA for the fiscal year 1938-39 because of the specific authorization for such employment which is contained in the Independent Offices Appropriation Act of 1938.
Lett to Lamberton

No. 832 - Georgia Electric Membership Corporation doing business in North Carolina.
Winokur to Yarley

No. 833 - The statutes relating to chattel mortgages and conditional sales in North Carolina.
Winokur to Frazier

No. 834 - Interpretation of voting provisions found in various state statutes requiring a certain number of votes to approve actions such as the mortgaging or sale of corporate property.
Broderick to Lamberton

This is a study of a large number of cases that have interpreted provisions requiring a certain number of votes for certain actions. The analogies found are generally in the field of religious socities. The conclusion is reached that despite unanimity of holdings in these cases, the authority is not sufficiently persuasive for us to conclude that the provisions within the Electric Memberships Act will receive a similar interpretation.

No. 835 - The form of instrument for the transfer of title to transmission lines in Georgia
Winokur to Yarley

No. 836 - The Power of the REA Administrator to act as an agent and accept bids for the purchase of materials for a group of cooperatives.
Hertz to Rushmer

No. 837 - The validity and effectiveness of the clauses in our standard form of contractor's bond waiving notice to the surety of extensions, modifications, additions, amendments, etc.
Hoyt to Helfrich

No. 838 - Validity of a mortgage of the entire corporate property of a corporation executed by directors without consent of the members.
Gerber to Fischer and Tilton

The problem concerns taxes but the rules and citations to general law are stated.

No. 839 - A study of permissible conditions in loans for electric lighting fixtures.
Nicholson to Munger

The conditions are classified into three types:

1. Conditions intended to insure the accomplishment of the general welfare purpose underlying and justifying the loan.
2. Conditions intended to improve the security for the loan.
3. Conditions intended as regulatory (including a brief discussion of U.S. v. Butler).

No. 840 - Statutory limitations on the right of utilities to extend lines.

A thorough study of all states and the statutory requirements in each state for extensions of lines.

No. 841 - Quotations from the Michigan Statute permitting consolidation of Michigan non-profit corporations.
Bullock to Berg

No. 842 - Purchase of lines from a power company by a cooperative.
Winokur to Blackburn

Study of the jurisdiction of various commissions interested in such a transaction, including Federal Power Commission, the Securities and Exchange Commission and the Georgia Public Service Commission.

No. 843 - Draft of a proposed provision to amend the Indiana Rural Electric Membership Act in order to admit foreign non-profit electrical corporations in Indiana.
Bullock to Hartung

No. 844 - Insolvency as the sole ground of equitable jurisdiction in New Mexico.
Hertz to Lamberton

Discussion of the New Mexico cases relating to what degree of insolvency is necessary in order for equity to take jurisdiction over a controversy.

No. 845 - Meaning of "lowest responsible bidder" in Government contracts
Winokur to Lamberton

A study of the cases and the administrative interpretations of the term "lowest responsible bidder" appearing in the Federal statutes requiring Government contracts to be let to such persons. The opinions of the Comptroller General concerning the awarding of contracts to persons other than the lowest bidders are also examined.

No. 846 - Purchase by one cooperative of the facilities of another.
Gerber to Berg

Statement of alternative plans by which one cooperative may purchase the facilities of another under the supervision of the REA. The problems raised under the REA Act and the REA Trust Indenture are discussed.

No. 847 - Constitutionality of Indiana Act for registration of engineers.
Hertz to Rushmer

No. 848 - Tax exemption legislation.
L. Jones to Moore

Contains a list of tax exemption provisions of various state statutes.

No. 849 - Qualification of a foreign corporation to do business in Texas.
Gerber to Robertson

No. 850 - Validity of REA trust indenture including a lien on "stock in trade held for resale".
Gerber to Blackburn & Jones

Examination of the problem of whether the inclusion of stock in trade within the property subject to a mortgage renders the entire mortgage invalid with the conclusion that in some states this is true. Assuming that this is true, however, the REA trust indenture avoids the effect by postponing the date of the lien to the date of default.

No. 851 - Validity of mortgage of consumable assets.
Gerber to Jones

Study of the effect of invalidity of one portion of a deed of trust upon the entire instrument.

No. 852 - Mortgaging of after-acquired property in Mississippi.
Gerber to Jones

RECENT STATUTES

ARIZONA

S. B. No. 11, 4th Sp. Sess., 1938

An act amending the District Enabling Act and adding a new section providing for the authorization of contracts with and the issuance of bonds to the Federal Government prior to any action on the subject by the Federal Government. Prior contracts and bonds so authorized by districts are hereby validated. The registration of voters to vote on the proposed issues is unnecessary. Calls and notices of election held pursuant to the terms of this act and published and posted prior to this act are validated by the act. Procedure for the conduct of elections to authorize the contracts and bonds is provided for. (Approved September 29, 1938)

ILLINOIS

S. B. No. 38, 1st Sp. Sess., 1938

An act providing for exemptions of property from taxes and including a provision for the exemption of "all property which may be used exclusively by societies for...mechanical...purposes, and not for pecuniary profit". (Became law without approval, July 12, 1938)

NOTE

Recent Developments as to the Necessity of Stockholders' Consent Prior to the Execution of Corporate Mortgages.

In the absence of statute it is well settled that the board of directors has unlimited authority to execute corporate mortgages. See 7 Fletcher, Corporations (1931) Sec. 3115; Wood v. Whelen, 98 Ill. 153 (1879); Mississippi-Louisiana Syrup Co. v. Canal Bank & Trust Co., 180 La. 737, 157 So. 545 (1934); Note (1937) 50 Harv. L. Rev. 662, 665, note 20. Despite this it has usually been considered good corporation practice to have the shareholders ratify the action of the directors. See Note (1938) 51 Harv. L. Rev. 1074, 1075, note 2; 4 Cook, Corporations (8th ed. 1923) Sec. 808; Westrut, A Comparative Study of the Corporation Laws of New Jersey, Delaware, Maryland and New York (1934) 11 N.Y.U.L.Q. Rev. 349, 363.

In Massachusetts the statute provides that stockholders' consent is necessary for the "sale, lease or exchange" of all the corporate property. Mass. Gen. Laws (1932) c. 156, Sec. 42. Prior to this year this statute had never been raised in the state courts but had been interpreted by the Federal Courts as requiring antecedent consent of shareholders in the case of a mortgage of all assets. Commerce Trust Co. v. Chandler, 284 Fed. 737 (C.C.A. 1st, 1922); McDonald v. First National Bank of Attleboro, 70 F. (2d) 69 (C.C.A. 1st, 1934). The Federal Courts have reasoned that Massachusetts follows a title theory of mortgages and therefore a mortgage of all the assets is equivalent to a sale of all assets, and so consent of shareholders is necessary under the statute. The statute was raised for the first time in the Massachusetts State Courts in Susser v. Cambria Chocolate Co., 13 N.E. (2d) 609 (Mass. 1938). However, the facts before the court did not call for a decision on this point inasmuch as the mortgage in the Susser case involved only 2/3 of the property of the corporation. The court's decision found, of course, no need for stockholders' consent. This holding is in accordance with the Federal Court view of Massachusetts law. See Keenan v. Zemoitis, 4 F. (2d) 572 (D. Mass. 1925) where it was held that a mortgage of part of the corporate assets was not within the statute. However, the Massachusetts Court was careful to point out that the Federal Court decisions "were not controlling". The case indicates that the question is still open in Massachusetts.

In a very recent case, Greene v. Reconstruction Finance Corporation, 24 F. Supp. 181 (D. Mass. 1938) the court considered the problem with respect to an identical Delaware statute, a Delaware corporation being involved. The court accepted the Federal Court cases as binding and stated that it saw no reason for giving the Delaware statute a different interpretation. Several persuasive grounds for distinguishing the cases and for departing from the prior decisions were developed by counsel for the RFC. It was shown that the Chandler case was based upon the proposition that a mortgage constituted a sale. This is clearly not so in Delaware. See Malsberger v. Parsons, 11 Del. Ch. 249, 100 Atl. 786 (1917). The court, however, stated that a mortgage, whether it be considered a sale or a lien, is essentially a security transaction. RFC counsel further argued that the Chandler case and those following it neglected to consider the legislative history of the Massachusetts statute. The statute in question originally contained the term "mortgage" as one of the transactions requiring the antecedent consent of shareholders. But when it was re-enacted in 1903 that term was omitted. See, Dodd, Statutory Developments in Business Corporation Law (1936) 50 Harv. L. Rev. 27, 36. The District Court answered this by the statement that this argument went only to the soundness of the Chandler case which it had to accept as binding. Finally, it was argued that the certificate of incorporation granted the directors unlimited authority to mortgage property and that this was an administrative interpretation of the Delaware statute indicating that such a power may be granted within the framework of the

Delaware General Corporation Act. The court states as to this that it seems "too slight a basis upon which to distinguish the controlling...cases."

In view of this case adopting an interpretation contrary to general predictions relating to statutes in the "lien" states, it seems that it will be future corporate practice to obtain consent of shareholders in practically all instances. This view is strengthened by an apt observation in a recent note on this problem, namely, that "recent agitation for limiting the authority of corporate managers may well revitalize statutes and decisions dealing with stockholders' consent." See Note (1938) 51 Harv. L. Rev. 1074, 1075.

The importance of the discussion in the Greene case by the District Judge is strengthened by the fact that it is based upon the master's report of W. Barton Leach, Esq., Professor of Law at Harvard University and author of Cases on Future Interests. From the discussion in the report, Professor Leach apparently concluded that the consent of shareholders was necessary in order to execute the mortgage in this case. As the case finally turned out, the holding was in favor of the mortgagee on the ground that the mortgage was ratified by the shareholders after its execution. On appeal to the Circuit Court of Appeals, the case was affirmed. The Circuit Court, however, refused to pass on the problem of whether the board of directors had the power to mortgage the property irrespective of consent of shareholders. The Appellate Court expressly states that it will not decide this problem. The court goes on the ground, primarily, that the validity of the mortgage is being attacked by a trustee in bankruptcy, and such person has no standing to raise the problem. On this latter point, the court expressly overrules the Chandler and McDonald cases on the basis of Royal Indemnity Co. v. American Bond and Mortgage Co., 289 U.S. 165 (1933). (The opinion in the Circuit Court of Appeals was written by Bingham, J. and has not as yet appeared in the reports. It was handed down on Nov. 12, 1938).

REVIEWING THE LAW REVIEWS

Douglas, Improvement in Federal Procedure for Corporate Reorganizations (Nov. 1938) 24 A.B.A. J. 875.

The chairman of the Securities and Exchange Commission finds the Chandler Act a noteworthy contribution to the law of corporate reorganizations and discusses the establishment of the Securities and Exchange Commission as a standing "Amicus Curiae" to aid the courts.

Chandler, The Revised Bankruptcy Act of 1938 (Nov. 1938) 24 A.B.A.J. 880.

A brief history of the various Bankruptcy Acts with a discussion of the latest changes.

Faught, Judicial Review of Administrative Agencies (Nov. 1938) 24 A.B.A.J. 897.

Another discussion concerning the extent to which judicial review of administrative findings and orders should go.

White, Trust Deed Foreclosures Under California Code of Civil Procedure (Nov. 1938) Note in 27 Calif. L. Rev. 66.

Recordation of Mortgages in Louisiana--Effect of Filing as Notice to Third Persons (Nov. 1938) Note in 1 La. L. Rev. 231.

Electricity as Proper Subject of Larceny (Nov. 1938) Note in 14 Notre Dame Lawyer 138.

Childs, A Glance at Electric Power Operating Company Bonds (Dec. 8, 1938) 22 Pub. Util. Fortnightly 739.

A discussion of the various factors

influencing the rise and fall in value of the bonds and considering also the effect produced by government competition.

Daggett, The Chattel Mortgage in Louisiana (Dec. 1938) 13 Tulane L. Rev. 19.

A thorough discussion of the procedural aspects of chattel mortgages in Louisiana.

Antichresis: An Ancient Security Device Revived (Dec. 1938) Note in 13 Tulane L. Rev. 131.

The Note, discussing the revival of this security device in Louisiana, concludes: "A mortgage creditor could obtain even greater security than his mortgage affords by entering into an antichresis in addition to his mortgage ...(because of the) guarantee that the revenues would not be carelessly administered."

Rosenberg, Reorganization - Yesterday, Today, Tomorrow (Dec. 1938) 25 Va. L. Rev. 129.

Brown, Public Service Commission Procedure - A Problem and a Suggestion (Dec. 1938) 87 U. of Pa. L. Rev. 139

Westwood, The "Right" of an Employee of the United States Against Arbitrary Discharge (Dec. 1938) 7 Geo. Wash. L. Rev. 212.

The author finds no such "right" to exist with or without civil service.

Why Mortgagors Leave Home: Extent of Equitable Relief in Depression Foreclosures

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Resale Price Maintenance: The Fair Trade Acts in Operation (Dec. 1938) Note in 52 Harv. L. Rev. 284.

A Dissertation - Not An Opinion

(continued from page 10)

the enterprise resulting from such construction. If a proper functioning requires the inclusion of existing facilities, either for engineering or financial reasons, can we utilize the comforting and sustaining doctrine of McCulloch v. Maryland, 4 Wheat. 316?

Proceeding from the easy to the more difficult problems, the following situations may be envisaged:

(a) If, in order to connect two or more unserved areas of a project, it should be necessary to construct a feeder line paralleling an existing distribution line, it can be argued with considerable assurance that the distribution line can be purchased. The objective to be attained by the purchase is the obtaining of a feeder line; taking over the existing service of customers along such line is merely incidental as a matter of good business in line with the purposes of the statute.

(b) In certain instances the purchase of existing facilities, although not necessary for the interconnection of unserved areas would greatly improve the engineering lay-out, provide better voltage regulation and effect important savings in cost. Would a loan under these circumstances place an undue strain upon the doctrine of incidental powers?

(c) Let us assume that the only justification for a purchase of existing facilities is a decided improvement in the earning power of the borrower, resulting from the highly profitable character of the business along such existing lines. Assume further that this improve-

(continued on next page)

ment in net revenue would make possible the inclusion of several hundred unserved customers in very thin areas which otherwise would have to be excluded from the project. The objection would be the furnishing of service to these otherwise unserved persons; the purchase would be merely a means to this end.

3. A different problem on the facts is presented by requests to REA borrowers for the furnishing of energy at wholesale to serve persons who previously have been served from another source of supply. If no additional financing by REA should be necessary, the problem would seem to be one of policy rather than one of law, unless the restrictive clause in the statute should be interpreted as binding the whole future operation of REA borrowers.

If additional REA financing should be necessary, two legal problems are presented. The first of these concerns an interpretation of the statute with respect to preventing competition. If the company or the municipality should desire to retain the business, it is obvious that REA could not finance a change in the source of supply if the Congressional intent included the prevention of competition.

If, however, the proposed arrangement has the assent of all parties concerned the above question drops out and we are faced with a second question of the character discussed above under the purchase of facilities. It would seem that this legal problem is exactly the same as that presented by the purchase of facilities for the sole purpose of improving revenue. Let us assume an REA project which completely surrounds a small municipality less than 1500 in population which has previously served its people from its own plant. It is now desired by the municipality to incorporate its system within the REA project, either by a purchase of energy at wholesale or by a lease of its system to the Cooperative. The capital cost to the Cooperative of connecting this business would be small. The resulting revenue would make possible the inclusion of farmers in thin areas who otherwise would be excluded. If the answer to the question based on these facts lead the inquiry into an infinitude of problems where the distinctions are ones of degree. The problem runs out into antinomies which I leave to such readers (if any) who may have followed my meanderings of thought to this point.